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13 | Attorneys for Plaintiffs

17 N.Z., R.M., B.L., S.M., and A.L.,
18 individually and on behalf of themselves
and all others similarly situated.

19 Plaintiffs,

20 || v.

21 FENIX INTERNATIONAL LIMITED,
22 FENIX INTERNET LLC, BOSS
23 BADDIES LLC, MOXY
24 MANAGEMENT, UNRULY AGENCY
25 LLC (also d/b/a DYSRPT AGENCY),
26 BEHAVE AGENCY LLC, A.S.H.
27 AGENCY, CONTENT X, INC., VERGE
28 AGENCY, INC., AND ELITE
29 CREATORS LLC.

28 || Defendants.

Case No. 8:24-cv-01655-FWS-SSC

DECLARATION OF ROBERT B. CAREY IN SUPPORT OF PLAINTIFFS' EX PARTE APPLICATION FOR EXTENSION OF TIME TO RESPOND TO DEFENDANTS FENIX INTERNATIONAL LIMITED'S AND FENIX INTERNET LLC'S MOTION TO DISMISS FOR *FORUM NON CONVENIENS* AND FOR LEAVE TO SERVE LIMITED DISCOVERY IN SUPPORT OF RESPONSE

Hon. Fred W. Slaughter

1 I, Robert B. Carey, hereby declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the
3 State of Arizona, and I have been admitted pro hac vice in this Court. I am a partner
4 at Hagens Berman Sobol Shapiro LLP, and have appeared in this case as one of the
5 counsel of record for Plaintiffs in the above-entitled action. I have personal
6 knowledge of the matters stated herein and, if called upon, I could and would
7 competently testify thereto.

8 2. I submit this declaration on behalf of Plaintiffs in support of Plaintiffs'
9 (1) Ex Parte Application to Vacate Current Briefing Schedule on Fenix Defendants'
10 Motion to Dismiss for Forum Non Conveniens ("FNC Motion"); (2) Motion for
11 Leave to Serve Limited Discovery in Support of Response to FNC Motion
12 ("Discovery Motion"); and (3) Request to Expedite Briefing on Plaintiffs'
13 Discovery Motion.

14 3. On November 7, 2024, I sent an email to Defense Counsel seeking to
15 meet and confer about "adjusting the schedule on your motion to accommodate
16 some jurisdictional discovery."

17 4. On November 8, 2024, Defense Counsel responded that his first
18 available time to discuss would be November 14, 2024, and asked what discovery
19 was contemplated "given that our 12(b)(2) motion was withdrawn pending a ruling
20 on the FNC Motion."

21 5. I met and conferred with Defense Counsel via videoconference on
22 November 14, 2024, during which time Defense Counsel again expressed
23 skepticism that any discovery was necessary in order to resolve the FNC Motion. I
24 pointed out that the Fenix Defendants had voluntarily agreed to jurisdictional
25 discovery in a related case in Illinois federal court ("McFadden"), and that it might
26 be less burdensome and/or more efficient for Fenix Defendants to agree to allow
27 Plaintiffs to use information produced in that case (to the extent relevant) in support
28 of their response to the FNC Motion here. Defense counsel did not reject the idea,

1 but asked for additional details about the nature of the discovery sought by
2 Plaintiffs.

3 6. The following day, I sent an email detailing the topics on which
4 Plaintiffs intended to seek limited discovery, as well as their relevance specifically
5 to the resolution of the FNC Motion. For the Court's convenience, the entirety of
6 that email is reproduced verbatim below:

7
8 From: Robert Carey <rob@hbsslaw.com>
9 Date: Friday, November 15, 2024 at 2:31 PM
10 To: Jason D. Russell - Skadden, Arps, Slate, Meagher & Flom
11 LLP (jason.russell@skadden.com)
12 <jason.russell@skadden.com>
13 Subject: Fenix CD Cal

14 Jason,

15 Thanks for the call yesterday. As we discussed, Plaintiffs intend
16 to seek limited discovery on topics specifically related to the
17 Fenix Defendants' motion to dismiss on forum non conveniens
18 grounds (MTD). The topics are outlined below, and as we
19 mentioned, many of them result from the Declarations filed in
20 support of the MTD. The declarations purport to establish facts
21 supporting dismissal but contain significant ambiguities with
22 respect to key facts—some (although not all) of which are
23 explained below.

24 **FNC Discovery Topics:**

25 1. Specific details relating to Fenix Defendants' interactions
26 with / presence in California, which relate to the enforceability
27 of the forum selection clause (FSC), as well as the private and
28 public interest factors the court will need to consider
 (specifically California's interest in and/or connection to the
 underlying facts.. These include:

1.a. The number and identities of Fenix-related officers,
2. employees, non-creator independent contractors, and vendors in
3. California—specifically over the course of the relevant time
4. period (the Taylor Decl. talks about the lack of such affiliations
5. only in the present tense, e.g., ¶ 9).

1.b. Locations other than the UK where employees, officers,
2. and records are located (the Taylor Decl. only refers to being
3. located “primarily” in the UK (¶ 8).

1 1.c. The specific role(s) of Fenix Internet (a non-UK entity) in
2 OnlyFans' US- and/or California-based activities.

3 2. Details re: the “inconvenience” and cost-management issues
4 Fenix Defendants would suffer if the FSC was not enforced.
5 Among other things, locations of employees and officers are
6 also relevant to this topic, since Taylor only generally refers to
7 “the inconvenience to OnlyFans’ personnel of litigating claims
8 all over the world.

9 3. Confirmation that all versions of the FSC were materially
10 identical during the relevant time period—especially in light of
11 the Taylor declaration’s ambiguous testimony that “all
12 versions” from 2018 to the present were “substantially similar”
13 both in language and relevant formatting (both of which are
14 relevant to the FSC’s enforceability).

15 **4. Fenix Defendants’ Relationships with any other
16 California-based entities, including:**

17 **4.a. Agency Defendants**—many of whose headquarters are in
18 California. The declarations don’t address these relationships—
19 even though they are at the heart of Plaintiff’s Complaint, and
20 that they are clearly relevant to California’s connection to /
21 interest in resolving the claims here.

22 **4.b. Counsel.** For example, Plaintiffs are aware that Fenix
23 Defendants have relationships with counsel in California related
24 to intellectual property disputes, but the declarations do not
25 establish that those relationships (or others that might exist) are
26 irrelevant to the FNC analysis.

27 **4.c. Vendors.** For example, although Plaintiffs are aware that
28 Fenix Defendants have a US subsidiary that contracts with
29 vendors who deal with OnlyFans merchandise sales; to the
30 extent those or other vendors used by Defendants are located in
31 and/or do business with California, this again relates to multiple
32 aspects of the FNC analysis having to do with the California
33 interests / public policies relevant to the FNC analysis.

34 As you pointed out, discovery on *purely* jurisdictional matters
35 is less relevant in light of the fact that the court is only deciding
36 the FNC motion; that said, to the extent jurisdictional discovery
37 overlaps with FNC-related discovery, that overlap doesn’t make
38 the discovery irrelevant to the FNC analysis, and Plaintiffs are
39 entitled to discover information that resolves the ambiguities in
40 Defendants’ declarations. Moreover, we have some additional
41 information relating to Fenix’s California connections that we
42 wish validate.

1 Proposed Schedule:

2 Because discovery on these topics will likely entail document
3 requests, interrogatories, and deposition testimony—and the
4 timing, which will require working around holiday schedules—
Plaintiffs also propose the following modifications to the
briefing schedule recently approved by the court:

5 Hearing on FNC Motion and Motion re: use of pseudonyms
6 (Initial Motions): From 1/30/25 to 4/3/25.

7 Plaintiffs' Opposition to Initial Motions: From 11/22/24 to
8 1/30/25.

9 Fenix Defendants' Replies: From 12/20/24 to 2/27/25.

10 Let me know how this works on our end. Last, can you let me
11 know if your client is interested in permitting the McFadden
discovery to be released to us in this case to see if it lessens the
load, though the IL specific stuff will not be of help and I really
don't know what else there is, so saying this somewhat in the
dark.

13 Rob

14 Robert Carey | Partner
15 Hagens Berman Sobol Shapiro LLP
Phoenix, AZ 85253
16 (602) 840-5900
17 rob@hbsslaw.com

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19 7. It is my understanding that in the *McFadden* case, the Fenix
20 Defendants voluntarily agreed to allow the plaintiffs limited discovery, and that the
21 information requested in discovery went beyond information for the state of
22 Illinois.

23 8. On November 19, 2024, Defense Counsel responded by email that
24 “[h]aving carefully considered your request and having discussed it with our client,
25 unfortunately, we cannot agree to your request for ‘limited discovery’ at this stage,
26 nor to a modification of the briefing schedule.” For the Court’s convenience, the
27 entirety of that email is reproduced verbatim below:

1
2 From: Russell, Jason D <Jason.Russell@skadden.com>
3 Date: Tuesday, November 19, 2024 at 7:56 AM
4 To: 'Robert Carey' <rob@hbsslaw.com>
5 Subject: RE: Fenix CD Cal

6 Rob,

7 Thank you for your email. Because we only received the
8 proposed discovery Friday night, I was not able to discuss it
9 with my client until yesterday. Having carefully considered
10 your request and having discussed it with our client,
11 unfortunately, we cannot agree to your request for “limited
12 discovery” at this stage, nor to a modification of the briefing
13 schedule. As set out below, we believe your requests
14 misunderstand the relevant points of the motion to dismiss for
15 forum non conveniens pending before the Court. So that our
position is clear, let me set out a few points.

16 First, any discovery targeted at the “private interest factors” is
17 irrelevant to the analysis the Court will have to conduct. This is
18 not a motion to dismiss for forum non conveniens without a
19 contract. Your clients agreed to a forum selection clause. As our
20 motion explained, the existence of a forum selection clause
21 means the private interest factors are already decided as a
22 matter of law in favor of the Fenix Defendants. There are no
grounds for a fact-finding expedition into these factors.

23 Second, your proposed discovery topics all relate to either
24 private interest factors or to a personal jurisdiction analysis,
25 none of which are relevant here. The Fenix Defendants’
26 interactions with and/or presence in California might, at best, be
27 relevant to a personal jurisdiction analysis, but that motion has
28 been withdrawn. That information might also, at best, be
relevant to the availability of compulsory process based on
jurisdiction, but that is a private interest factor and therefore
irrelevant. The location of evidence is likewise a private interest
factor, and Fenix Internet’s activities in OnlyFans’ US activities
is only conceivably relevant to personal jurisdiction, and not
forum non conveniens.

23 Your other proposed discovery topics are similarly focused on
24 private interest factors. The burden on the Fenix Defendants of
25 litigating in California is a private interest factor, which is
26 already decided in the Fenix Defendants’ favor. Prior versions
27 of the forum selection clause were already provided in the
28 Taylor Declaration, do not require discovery, and the
declaration covers the relevant time period. In any event, the
information sought is publicly available via the Internet. The
Fenix Defendants’ relationships with other California-based
entities remains, again, only conceivably relevant to the

1 personal jurisdiction analysis at best, which is separate from
2 forum non conveniens. And while not relevant, some of that
3 information has also already been provided by Agency
Defendants themselves.

4 Third, I am sure you are not seeking information related to
5 attorney-client privilege. Nevertheless, your discovery topic
6 4.b. regarding Fenix Defendants' relationships with counsel in
7 California conceivably can be construed as seeking information
8 covered by attorney-client privilege. In addition to being
9 irrelevant for the reasons described above, the Fenix
10 Defendants will not provide information that seeks to invade
11 the privilege nor will the Fenix Defendants waive that privilege.

12 Fourth, there is no "overlap" of jurisdictional discovery with
13 FNC-related discovery, because our Rule 12 motion has been
14 withdrawn and is not pending. If our FNC motion is granted,
15 there will never be even a theoretical argument for
16 jurisdictional discovery.

17 Fifth, the Fenix Defendants will not consent to
18 releasing McFadden discovery in this case. At the outset, as we
19 discussed in general terms before I saw your specific requests,
20 the discovery in McFadden is relevant (if at all) only to
21 personal jurisdiction, which is not relevant here with no
22 personal jurisdiction motion pending, and is subject to a
23 protective order in that suit. In addition, as you noted, that
24 discovery concerned issues unique to Illinois law and has little
25 to no relevance in this case under California or Ninth Circuit
26 law.

27 We do not believe that you need, or are entitled to conduct,
28 discovery to oppose our FNC motion. You have had our motion
to dismiss for forum non conveniens since October, stipulated
to the current briefing schedule both before you had the motion
and once again after it was filed, and did not raise discovery as
an issue during either of those negotiations on the briefing
schedule.

29 I appreciate you reaching out with your request and look
30 forward to amicably working through issues going forward.

31 Best,

32 Jason

33 9. I declare under penalty of perjury that the foregoing is true and correct.

1 Executed this 21st day of November, 2024, in Phoenix, Arizona.
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4 HAGENS BERMAN SOBOL SHAPIRO LLP
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7 By *s/ Robert B. Carey*
8 Robert B. Carey
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